

So Ordered.



Patricia C Williams

Patricia C. Williams Bankruptcy Judge

Dated: November 16th, 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

10 In re: }
11 LLS AMERICA, LLC, } No. 09-06194-PCW11
12 Debtor. }

13 BRUCE P. KRIEGMAN, solely in }
14 his capacity as court-appointed }
15 Chapter 11 Trustee for LLS America, }
16 LLC, }
17 Plaintiff, }
18 vs. }
19 IAN PALMER and BONNIE }
20 PALMER, }
Defendants. }
Adv. No. 11-80141-PCW
MEMORANDUM DECISION RE:
DEFENDANTS IAN AND BONNIE
PALMER'S MOTION TO DISMISS
(ECF NO. 7)

21 This adversary is one of hundreds commenced by the trustee of the LLS America,
22 LLC (“LLS America”) bankruptcy estate, which adversaries seek, pursuant to 11 U.S.C.
23 § 548 and other causes of action, to recover money paid by the debtor to certain lenders
24 or investors as part of an alleged Ponzi scheme conducted by the debtor. Defendants Ian
25 and Bonnie Palmer filed a motion to dismiss on December 18, 2011, ECF No. 7.

26 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
27 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss
28 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

MEMORANDUM DECISION RE: . . . - Page 1

1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Duane Swinton (ECF No. 17), the trustee presented evidence in
5 this case that the defendants loaned or invested \$110,000 (CAN) and 13 promissory
6 notes were issued. In 277 distributions occurring from June 2000 to January 2009, the
7 defendants received \$256,801.43 (CAN). According to the trustee, the defendants filed
8 a proof of claim in the amount of \$198,238.80 in the underlying LLS America case. By
9 declaration (ECF No. 10), the defendants presented evidence that they reside in Canada,
10 rarely travel to the United States, and “virtually all” promissory notes listed a Canadian
11 entity as borrower with distributions primarily made from Canadian entities. The
12 declaration further states that the loans or investments were solicited in Canada, but no
13 details were provided regarding the manner of the solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of
15 process; (2) improper extraterritorial application of United States bankruptcy law; and
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
18 forth in the Previous Decision and is applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of
20 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of
21 claim is a consent to jurisdiction to adjudicate that claim and the related action brought
22 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding
23 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the
24 Previous Decision and is applicable to the subject motion, which is **DENIED**. Counsel
25 for the defendants shall submit an order consistent with this decision.

26

27

//END OF MEMORANDUM DECISION//

28

MEMORANDUM DECISION RE: . . . - Page 2